

REMARKS

The Examiner has rejected Claims 1, 3, 5, 6, 9-11, and 14-16 as being anticipated by Johnson (US 4,536,180) under 35 U.S.C. §102(b). The remaining claim are rejected by Johnson under 35 C.F.R. §103(a) as being obvious.

Johnson discloses a surgical instrument for use in suction lipolysis. The instrument comprises a main tube and a separate passageway with an end opening inside the closed end of the main tube. The instrument is connected with a controllable source of vacuum. A valve is provided for venting the other end of the passageway to allow air to enter the closed end portion of the main tube during use for clearing an obstruction therein.

The Examiner attempts to supply some of the missing elements of the claims – after admitting that Johnson does not teach them – for example, with respect to the sensor recited in at least Claims 3, by suggesting that Johnson teaches a sensor because a sensor is **“the only way of controlling the vacuum conditions.”** (Emphasis added) Not only is this completely untrue, no evidence is supplied to support the contention. Johnson simply does not teach a sensor.

Another example is where the Examiner suggests that since the source of vacuum is controllable, therefore there must be a controller. Again, this is mere speculation, since Johnson does not actually show anything that is a controller. The statement directly contradicts the above assertion, where the Examiner insists that a **sensor is the only way** to control vacuum conditions. Vacuum can be controlled without any controller at all, such as for example a vent.

The Examiner may not simply wish elements into existence. Johnson does not teach a controller or a sensor and therefore cannot anticipate any of the claims that recite a controller or sensor (Claims 1-10, and 15).

Johnson does not disclose means for removing clots or plugs in the drainage lumen, these means comprising a first pressure sensor for measuring the pressure in the auxiliary lumen

and means to increase the pressure difference between a pressure in the drainage lumen and a pressure in the atmosphere when the auxiliary lumen is open only when the pressure measured in the auxiliary lumen corresponds at least to atmospheric pressure. Therefore, Johnson cannot anticipate Claims 1, 11 and 16 or any claim that depends therefrom.

The subject matter of Claims 1, 11 and 16 (and the dependent claims) is not obvious in view of Johnson, for at least the reason, as demonstrated above, that there is no case of *prima facie* obviousness. Further, the instrument according to Johnson has still the problem that only minor obstruction can be cleared. If the lumen is really plugged, simple venting is not sufficient and the instrument has still to be removed and cleaned. The apparatus and the method according to the invention claimed, however, can remove the clots in a simpler and more expedient way. None of the prior art suggests to measure the pressure in the auxiliary line and increase the suction power only when the pressure in this line is at least atmospheric pressure. Therefore, Johnson does not render the claims obvious.

Reconsideration of the rejection is requested, and a Notice of Allowability solicited. The Commissioner is hereby authorized to charge any additional fees to Deposit Account No. 13-2490.

Respectfully submitted,

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/Steven B. Courtright/
Steven B. Courtright
Registration No. 40,966

McDonnell Boehnen Hulbert & Berghoff LLP
300 South Wacker Drive
Chicago, Illinois 60606
312.913.0001